Rayel Electric Company *and* Local Union 716, International Brotherhood of Electrical Workers, AFL-CIO-CLC. Case 23-CA-7791

March 30, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On June 15, 1981, Administrative Law Judge Gerald A. Wacknov issued the attached Decision in this proceeding. Thereafter, counsel for Respondent filed exceptions and a supporting brief, and counsel for the General Counsel and the Charging Party filed cross-exceptions and briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, and to adopt his recommended Order, as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondents, George Black, an Individual doing business as Rayel Electric Company and Rayel Enterprises Incorporated d/b/a Rayel Electric Company, Houston, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] The Administrative Law Judge presumed that, had Respondent not repudiated its contract with the Union, it would have reemployed the three laid-off employees because it found their work satisfactory, and thereby would have reestablished the Union's majority status. Those individuals, however, may not have been the ones referred through the hiring hall. Moreover, as found by the Administrative Law Judge, the Union's majority status was established independently of, and was not affected by, Respondent's failure to rehire them.

[2] Respondent was a sole proprietorship when the instant complaint issued, and became incorporated during the course of this proceeding. Accordingly, we shall amend the recommended Order and notice to provide joint and several liability on the part of George Black, an Individual doing business as Rayel Electric Company.

We have modified the Administrative Law Judge's notice to conform with his recommended Order.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain collectively with Local Union 716, International Brotherhood of Electrical Workers, AFL-CIO-CLC, as the exclusive bargaining representative of our employees in the following appropriate unit with regard to rates of pay, wages, hours, and other terms and conditions of employment:

All journeyman and apprentice electricians, excluding all other employees, guards, and watchmen and supervisors as defined in the Act.

WE WILL NOT fail and refuse to abide by the terms of the past and current collective-bargaining agreements to which we have been bound since February 17, 1978, between Southeast Texas Chapter, National Electrical Contractors Association, Inc., and the above-named labor organization.

WE WILL NOT fail and refuse to furnish the Union with information necessary for it to carry out its collective-bargaining functions, and WE WILL furnish the Union with the information it has requested.

WE WILL NOT withhold contributions to the various trusts as prescribed by the above contracts, or otherwise depart from the terms of such contracts.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, bargain collectively with the above-named Union as the exclusive bargaining representative of our employees in the above-described unit with regard to rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL comply with the terms and conditions of the aforementioned collective-bargaining agreements, and give them full retroactive

effect, including contributions to the various trusts as prescribed therein.

GEORGE BLACK, AN INDIVIDUAL DOING BUSINESS AS RAYEL ELECTRIC COMPANY, AND RAYEL ENTERPRISES, INCORPORATED D/B/A RAYEL ELECTRIC COMPANY

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge: Pursuant to notice, a hearing with respect to this matter was held before me in Houston, Texas, on February 24 and 25, 1981. The charge was filed on January 23, 1980, by Local Union 716, International Brotherhood of Electrical Workers, AFL-CIO-CLC (herein called the Union).

Thereafter, on August 4, 1980, the Regional Director for Region 23 of the National Labor Relations Board (herein called the Board) issued a complaint and notice of hearing alleging a violation by Rayel Electric Company (herein called Respondent) of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (herein called the Act).

The parties were afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel, counsel for Respondent, and counsel for the Union.

Upon the entire record and based on my observation of the witnesses and consideration of the briefs submitted, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is an electrical contractor with its principal place of business located in Houston, Texas. In the course and conduct of its business operations, Respondent annually purchases and receives at its Houston, Texas, jobsites products, goods, and materials valued in excess of $50,000 from suppliers who, in turn, receive said products, goods, and materials directly from points and places located outside the State of Texas. Additionally, Respondent performs electrical service work valued in excess of $50,000 for employers directly engaged in commerce within the meaning of the Act. It is admitted, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issues raised by the pleadings are whether Respondent has violated Section 8(a)(5) and (1) of the Act by repudiating its collective-bargaining agreement with the Union, and by refusing to furnish the Union with certain requested information.

B. *The Facts*

Respondent's business operations commenced in March 1977. Respondent's owner, George Black, was the only individual performing electrical work for Respondent until on or about September 1977, when he hired his brother, David Black, apparently as a helper. Thereafter, in order to hire certain additional employees with the requisite expertise, George Black contacted the Union and, on January 13, 1978, signed a "Letter of Assent-A" as follows:

> In signing this Letter of Assent, the undersigned firm does hereby authorize SOUTHEAST TEXAS CHAPTER, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC., as its collective bargaining representative for all matters contained in or pertaining to the current approved Inside Labor Agreement between the SOUTHEAST TEXAS CHAPTER, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC., and LOCAL UNION 716, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS. This authorization, in compliance with the current approved Labor Agreement, shall become effective on the lst day of June, 1977. It shall remain in effect until terminated by the undersigned employer giving written notice to the SOUTHEAST TEXAS CHAPTER, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC., and to the LOCAL UNION at least one hundred fifty (150) days prior to the then current anniversary date of the aforementioned approved Labor Agreement.

Upon executing the letter of assent-A, and thereby becoming bound by the then current collective-bargaining agreement between the Union and Southeast Texas Chapter, National Electrical Contractors Association, Inc. (NECA), extending from June 1, 1977, to May 29, 1979, Black received appropriate referral cards and hired three journeyman electricians, all of whom were union members, pursuant to the terms of the exclusive hiring hall provisions of the contract. Thus, Dan Sneed, a journeyman electrician, was "officially"[1] hired on January 13, 1978, and Al Hass and Gordon Matheson, both journeyman electricians, were hired on February 17 and June 25, 1978, respectively. The three employees were paid in accordance with the contract scale, and Respondent paid the various fringe benefits and contributed to the various

[1] Sneed was actually hired by and commenced working for Respondent about the first week of December 1977.

funds on their behalf in accordance with the contract.[2] Each of these employees drove a service truck, and were dispatched to jobs by George Black. Thus, it is clear that at all times subsequent to February 17, 1978, the date that Respondent hired Hass, a majority of Respondent's employees were union members and desired to be represented by the Union.

Respondent's work force, described above, did not change until on or about September 19, 1978, when Respondent found it necessary to employ certain additional employees on a short-term basis in order to complete various jobs. None of the additional employees were referred to Respondent by the Union, nor were they paid in accordance with the contract.

Respondent's records show that Sneed and Matheson worked on a regular basis until on or about December 1, 1978, when they were laid off. Hass worked on a regular basis until sometime in November 1978, when he sustained an injury and was unable to work, although he was also carried on Respondent's records as an employee until on or about December 1, 1978.

Horace Fox, assistant business representative of the Union, testified that he phoned Black in December 1978, upon learning that Respondent had laid off the journeyman electricians. Black advised Fox that the layoff was a result of lack of work, and that Black intended to operate the business by himself until the work picked up, at which time he would again request referrals through the Union. Thereafter, through the spring and summer of 1979, Fox checked with Black about four or five times on a periodic basis, and Black would reiterate that he was operating the one-man shop himself, and would place a call for electricians when work became available.

In October 1979, Fox noticed a Rayel Electric truck at a jobsite and, upon investigating, discovered two employees performing electrical work.[3] Fox contacted Black about the matter, and Black contended that the work in question was not electrical work covered by the contract, again reiterating that he would call the Union if he needed electricians. Thereupon, on October 18, 1979, Fox sent the following letter to Black:

> It has recently come to our attention that you are currently engaging in the performance of electrical work, and that you have some employees on your payroll performing such work.
>
> As you know, your Company has a contract with this Local Union covering employees engaged in electrical work. In order that we may determine whether or not there has been a violation of our contract, you are hereby requested to provide the following information:
>
> (1). The names, classification, rates of pay and date of hire of all employees currently engaged in the performance of electrical work.
>
> (2). A list of all jobs you are presently working on, or jobs you anticipate performing during the next six weeks.
>
> Your immediate attention to this matter will be appreciated.

By letter dated October 31, 1979, Black replied to the Union as follows:

> Please be advised, in reference to your letter dated October 18, 1979, that as of October 18, 1979. [sic] I have cancelled the $5,000.00 bond to L.U. 716, due to the fact that I have not worked anyone through *your* referral system since December, 1978.
>
> Also you will not receive item's (1) & (2). Re., your letter October 18, 1979.
>
> Thank You for all the help I've received from *your* organization, [sic] with more assistants [sic] like some of the choices employeed by L.U. 716 it's a small worder [sic] to people like myself, that you do not receive more notices like this one.
>
> In so many words Gentlemen, you may consider this letter as terminating any and all contracts, verbal, written or otherwise, that we may have had.
>
> Thank you for the opportunity to submit this letter after some of dealing [sic] I have had the pleasure to indure [sic].

C. *Analysis and Conclusions*

The law is clear that, when a union achieves majority status among employees in a permanent and stable work force, a contractual relationship initially entered into under Section 8(f) of the Act becomes a 9(a) relationship and the employer is then under a statutory duty to recognize and bargain with the Union. Further, under such circumstances, the Union enjoys an irrebuttable presumption of majority status for the duration of the contract. *Precision Striping, Inc.*, 245 NLRB 169 (1979); *Land Equipment Incorporated; and Equipment Service Rentals, a Single Employer*, 248 NLRB 685 (1980); *Hageman Underground Construction, et al.*, 253 NLRB 60 (1980).

The record amply supports the complaint allegation, and I find, that all journeyman and apprentice electricians employed by Respondent, excluding all other employees, guards, watchmen and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act. Such a unit is commensurate with the work covered by the collective-bargaining agreement herein, and although Respondent's answer denies the appropriateness of such a unit, Respondent has not proffered evidence in support of its position which would tend to show that the described unit is inappropriate.

It is clear that the Union attained majority status among Respondent's complement of unit employees upon the hire of Al Hass on February 17, 1978, as the complement of unit employees was then comprised, assuming *arguendo* that David Black worked as an apprentice electrician, of two union members and one nonunion member. The three employees worked steadily for nearly a year and, along with Gordon Matheson, another union

[2] David Black, however, was not a union member, nor was he paid in accordance with the contract.

[3] In fact, Respondent had three employees on its payroll at that time, namely, David Black, Jeffery Black, George Black's son, both of whom were apprentices, and James White, a journeyman electrician. None of the employees were union members. As of the date of the hearing, Respondent employed eight employees.

member referred through the contractual hiring hall on June 25, 1978, were the only unit employees in Respondent's employ until September 19, 1978.[4] Thereafter, on various dates in 1978, Respondent hired some six additional employees, but the record clearly shows that these six employees were hired on a short-term basis to complete certain work, and there is no indication that Respondent considered that these individuals would remain indefinitely or become part of Respondent's regular work force.[5] Additionally, article II, "Referral Procedure," of the contract to which Respondent became a party, provides that employees not obtained through the hiring hall shall be considered "temporary employees" who shall be replaced as soon as registered hiring hall applicants are available.

On the basis of the foregoing, I find that the Union achieved majority status on February 17 or on June 25, 1978, at the latest, in a permanent and stable work force. I further find that on that date Respondent thereby became obligated to recognize and bargain with the Union for the duration of the contract. *Precision Striping, Inc.*, 245 NLRB 169 (1979).

The aforementioned contract, which expired on May 30, 1979, was succeeded by the current contract between the Union and NECA which extends from May 30, 1979, to September 1, 1981. Respondent did not provide either NECA or the Union with timely notice that it no longer authorized NECA to act as its collective-bargaining representative. Moreover, Respondent at least implicitly indicated an intention to be bound by the current collective-bargaining agreement as a result of Black's repeated representation to Assistant Business Representative Fox, from December 1978 and continuing until October 1979, that Black intended to obtain electricians through the Union's hiring hall. I thus find that the irrebuttable presumption of union majority status evidenced by the 1977–79 contract has continued and is now demonstrated by the current contract to which Respondent is bound because of its failure to timely rescind its letter of assent-A. See *Nelson Electric, Gary C. Nelson, Inc.*, 241 NLRB 545 (1979), enfd. 106 LRRM 2393 (6th Cir. 1981), wherein the language of the letter of assent-A was found to bind the employer indefinitely, and was not deemed to be limited to the contract in existence at the time of the execution, as Respondent maintains herein. See also *Pacific Intercom Co.*, 255 NLRB 184 (1981).

Moreover, as the record clearly shows that Respondent was entirely satisfied with the services of Sneed, Hass, and Matheson, it may be fairly presumed that Respondent would have reemployed these individuals beginning in April 1979, when Respondent's business operations apparently necessitated the hiring of electricians. Thus, I find that absent Respondent's considered intent to violate the terms of its contractual commitment, Respondent would have rehired these three union members commencing in April 1979, during the term of the initial contract, and that in this manner the Union's majority status would have been reestablished. See *Haberman Construction Company*, 236 NLRB 79 (1978). Further, I find that Respondent is estopped on equitable principles from now asserting that the Union has not continued to remain the majority representative of the unit employees herein. *Pacific Intercom Co., supra.*

By letter dated October 18, 1979, the union requested certain information regarding Respondent's current employee complement. Black's reply unequivocally advised that he was refusing to furnish the requested information, and further stated that he was terminating any and all contracts with the Union. Under the circumstances set forth above, I find that Respondent was then bound to a collective-bargaining relationship with the Union by the current collective-bargaining agreement, and was under an obligation to furnish the Union with the requested information. By failing and refusing to do so, I find that Respondent has violated and is violating Section 8(a)(5) and (1) of the Act. See *Custom Wood Specialties, Inc.*, 243 NLRB 920 (1979); *Associated General Contractors of California*, 242 NLRB 891, 893 (1979); *Ellis Tacke, d/b/a Ellis Tacke Company*, 229 NLRB 1296 (1977).

Respondent contends that the charge herein is time-barred by Section 10(c) of the Act. The General Counsel, citing *Don Burgess Construction Corporation*,[6] contends to the contrary that the period of limitation does not begin to run until the Union became aware of the existence of a potential violation of the Act. Fox's testimony that he was unaware until October 1979 that Respondent had, from on or prior to April 1979, violated the terms of the then-current collective-bargaining agreement, stands unrebutted in the record. Moreover, Fox's testimony that Black misrepresented his intentions regarding future use of the hiring hall is also unrebutted. Under these circumstances, and in agreement with the General Counsel, I find that the 10(b) period was tolled until October 1979, and that the charge herein, filed on January 23, 1980, was timely. *V M Construction Co., Inc.*, 241 NLRB 584, 587 (1979); *Pacific Intercom Co., supra.*

CONCLUSIONS OF LAW

1. Respondent, Rayel Electric Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[4] Respondent's records also show that Harrison Deckard was hired on December 14, 1977, and worked until February 8, 1978, and that two sons of Al Hass, namely, Ray and Roy Hass, worked from June 16 to September 9, 1978, apparently during their school vacation. However, Respondent agreed that the three aforementioned individuals would not be appropriately included in the unit because they were regarded as, in effect, independent contractors and were not carried on Respondent's records as employees, and because their employment was of a temporary nature.

[5] Respondent contends that Dan Sneed is a supervisor and is not appropriately a part of the unit. In support of this contention, Respondent presented evidence showing that Sneed was instrumental in hiring and thereafter supervising the work of Walter Haynes, a journeyman electrician hired on September 19, 1978, and James Pruitt, hired on October 23, 1978. The General Counsel presented contrary testimony, primarily through Sneed, who denied that he had hired these individuals or had been granted or exercised any supervisory authority over them or other employees. I deem it unnecessary to resolve this issue, as it is clear that at least from the date of his hire until September 19, 1978, Sneed was not a supervisor within the meaning of the Act.

[6] *Don Burgess Construction Corporation d/b/a Burgess Construction and Donald Burgess and Verlon Hendrix d/b/a V & B Builders*, 227 NLRB 765 (1977).

2. The Union, Local Union 716, International Brotherhood of Electrical Workers, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All journeyman and apprentice electricians employed by Respondent, excluding all other employees, guards, watchmen and supervisors as defined in the Act.

4. At all relevant times since February 17, 1978, the Union has been, and is now, the exclusive representative for the purposes of collective bargaining of all employees in the above-described appropriate unit.

5. By repudiating its bargaining relationship and collective-bargaining agreement with the Union, and by failing and refusing to furnish the Union with certain requested information as found herein, Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

6. The aforementioned unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent violated and is violating Section 8(a)(5) and (1) of the Act, I recommend that it be required to cease and desist therefrom and from in any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights under Section 7 of the Act. Moreover, Respondent shall be required to post an appropriate notice, attached hereto as "Appendix," and abide by the terms of the Order herein.

Based on the foregoing findings of fact, conclusions of law, and the entire record herein, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[7]

The Respondent, Rayel Electric Company, Houston, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to abide by the collective-bargaining contract entered into on January 13, 1978, and by the successor contract currently in effect between Local Union 716, International Brotherhood of Electrical Workers, AFL-CIO-CLC, and Southeast Texas Chapter, National Electrical Contractors, Inc.

(b) Refusing to recognize and bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with the Union, as the exclusive representative of the employees in the following appropriate unit:

> All journeyman and apprentice electricians employed by Respondent, excluding all other employees, guards, watchmen and supervisors as defined in the Act.

(c) Refusing to furnish the Union with information necessary to fulfill its duties as the collective-bargaining representative of Respondent's employees.

(d) Withholding contributions to the various trusts as prescribed by the above contracts, or otherwise departing from the terms of such contracts.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request, recognize and bargain with the Union concerning the employees in the aforementioned unit, as required by the contract entered into on January 13, 1979, and by the current successor contract.

(b) Upon request, honor and give full retroactive effect to the aforementioned contracts, including contributions to the various trusts as prescribed therein.[8]

(c) Furnish the Union with the information requested in its letter of October 18, 1979.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts owing under the terms of this Order.

(e) Post at its office in Houston, Texas, copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 23, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 23, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[7] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[8] See *Hageman Underground Construction, supra; Merryweather Optical Company*, 240 NLRB 1213 (1979).

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."